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Implementing the Principles of the Rule of Law and Social Justice in the Process of Entrance Examinations to the Institutions of Higher Education in a Post-Soviet Country

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1. The Centre for Social and Political Research of the University of "Kiev-Mohyla Academy" co-ordinates together with the East London Business School (University of East London) a REAP (Regional Academic Partnership) project on comparative public administration. The aim of the project is to work out the relevant course to be taught at the Faculty of Social Sciences and the Faculty of Law at the University of "Kiev-Mohyla Academy". The main regions whose experience is analysed in the process of course development include the CIS countries (Ukraine and Russia), Western Europe (United Kingdom and Germany), East Asia (Japan and Taiwan), South Asia (India and Kuwait).

2. The so called "examination power" is one of important spheres and aspects of public administration. The State examination system aimed at creating the basis for meritocracy has a long history, and it has been in detail developed in the East-Asian countries. In China, this system "has survived through the ages because it draws no distinction between the noble and the poor; rather, it is an open competition where talent is the only factor determining the selection of officials".¹ After the creation of the Republic of China in 1912, the system of separation and interdependence of powers in this State has included not only such branches of power as legislative, executive and judicial (traditional for modern Western democracies), but also examination and control branches. Article 83 of the 1947 Constitution of Republic of China (which is still in effect in Taiwan) specifies that "the Examination Yuan shall be the highest examination organ of the State and shall have charge of matters relating to examination, employment, registration, service rating, scale of salaries, promotion and transfer, security of tenure, commendation, pecuniary aid in case of death, retirement and old age pension".² There are two ministries under this Yuan (branch of power): Ministry of Examination and Ministry of Civil Service.

Though without detailed conceptual elaboration, quite similar system of examination procedures in-built into the State mechanism exists in Japan.³

In fact, any modern Western State has some kind of an examination system related to the spheres of employment and promotion policies within the Civil Service, State control over the autonomous professional bodies (e.g. those of lawyers, accountants, doctors and pharmacists, architects etc.), and State control over educational system in general (especially higher and secondary education). At the moment post-Soviet States have only elements of such system, and the societies of these countries are in need of working out and introducing effective examination systems being part of both the State and the civil society.

¹ An Introduction to the Executive Yuan. Republic of China. (The Executive Yuan: s.l., 1997.) - P.4.

² Constitution. Republic of China. (Government Information Office: Taipei, 1997.) - P. 16.

³ See e.g.: Handbook for Recruitment and Promotion of Civil Servants in Japan. (National Personnel Authority: Tokyo, 1999.)

3. The quality management at the institutions of higher education includes (among many other aspects) the enactment of mechanisms of: (a) guaranteeing efficiency of the procedures and the quality of results of students enrolment, and (b) preventing irregularities on a part of university (administrative and teaching) staff in the process of students enrolment. In this sphere there are many problems which are common to the majority of institutions of higher education in post-Soviet countries. Apart from paying serious attention to economic (and in particular financial) aspects of these problems, it is necessary to find the adequate organisational solutions at the level of individual institutions of higher education (which may be quite similar or dissimilar), and to organise joint reform efforts of individual universities, the academic and professional communities and the State authorities. There are already such efforts undertaken in Ukraine, and the present paper is aimed at explaining some ideas resulting from the first steps of these efforts.

4. The system (dominating in Ukraine) of oral entrance examinations to the institutions of higher education requires a profound reformation because it usually does not provide for an objective evaluation of knowledge and professional fitness of the applicants, and can lead to irregularities among the examiners (the teaching staff) and the administrative staff. The present organisation of entrance examinations often represents a source of serious social tensions and discontent in the country.

It is necessary to work out and gradually introduce alternative (to the presently existing system) mechanisms of tests (written examinations) accompanied by other mechanisms of ensuring the implementation of principles of legality (the rule of law) and social justice in the process of students enrolment to the institutions of higher education.

There must be worked out and clearly defined criteria for the evaluation of professional fitness of applicants, and the procedures of interviews that are to be an additional (alongside with the written examinations) mechanism of students selection by the institutions of higher education. Some special requirements may be established for the category of "mature students" especially for those who already have a certain professional experience.

5. It is necessary to create or reorganise some major functional components in the mechanism of access to the higher education in a post-Soviet country in order to perform the following functions:

(a) to guarantee confidential character (until the beginning of the examination) of concrete examination questions, on condition that the general programme of entrance examinations may be available for everyone;

(b) to eliminate the possibility of cheating (by students) in the process of the examinations (in particular the possibility of availability of "special conditions" for certain persons or certain groups of persons);

(c) to ensure the "transparency" of the process of taking (including marking the results) of entrance examinations (especially oral examinations) and the possibility "to reconstruct the reality *post-factum*", in particular due to the use of television monitors demonstrating the course of the examinations (for everybody who wishes to see it) and

video- (audio-) recording, on condition of proper storing video- (audio-) tapes after the examinations in the structures independent from the administration of the institutions of higher education, etc.;

(d) to ensure the adequate level of professional competence of the examiners and their legal responsibility for the objectivity of their examination marking;

(e) to eliminate any possible attempt by the administration to manipulate the composition of the concrete groups of examiners, and to introduce the mechanisms which allow to involve into the examination process independent unbiased examiners (in particular, through the exchange of examiners among the institutions of higher education);

(f) to ensure the presence of official but independent (from the administration of the institutions of higher education) controllers and consultants (in particular foreign) in the rooms where the organisational work for the examinations is carried out;

(g) to work out mechanisms of anonymous examinations (without the indication of the name and surname of an applicant, while using an individual code only, for instance a number) upon a condition that the prior and the subsequent (i.e. taking place after the examination) identification of an applicant is ensured (thus excluding a possibility that the examination could be taken by somebody else instead of an applicant);

(h) to work out and implement efficient procedures of an appeal, etc.

6. Taking into account that the immediate transition to the effective test system of entrance examinations in all institutions of higher education in Ukraine is impossible, and that a considerable preparation and organisational activities are necessary for such transition, it seems to be necessary:

(a) to start a pilot project, and introduce in the law schools (faculties, departments, institutes, academies, etc.) which express their consent for the experiment, new and more efficient mechanisms for ensuring and maintaining the principles of objective evaluation of applicants knowledge, skills and professional fitness, and therefore the principles of legality (the rule of law) and social justice during the process of selection of students;

(b) in conformity with the provisions of the "Law on Education", to combine (within the framework of control over the procedures of access to the higher education in law schools), the control on the part of state bodies (both executive and representative) and the control on the part of professional associations (of lawyers and of academic community);

(c) to invite foreign professionals (specialists in organisation of entrance examinations) to participate in the control process and to advise on the issues of organisation and conducting of entrance examinations;

(d) to invite foreign and international foundations and potential Ukrainian sponsors to provide technical assistance (in particular, to provide necessary video, copying and numeration appliances, appliances for fabrication of reliable passes – temporary identity cards and other documents with attached photographs that make impossible to alternate such photographs and therefore to forge the documents, etc.);

(e) to create and legalise an inter-institutional, inter-departmental Co-ordination Council for the improvement of organisation of legal education in Ukraine within the structures of one of the highest reform-minded State institutions as an advisory and

consultative body which would be able to provisionally perform assisting functions of the exchange of experience in the relevant sphere, working out of relevant expert recommendations with the view of their future practical implementation in pilot projects and in legal drafting and other norm-making activities;

(f) to continue research, preparation of seminars and publications related to the issues of access to education in law schools and to institutions of higher and professional education in general;

(g) to support initiatives aimed at strengthening the role of independent professional associations in the process of higher education and professional training, and in particular in the organisation of entrance examinations to the institutions of higher education.

7. The research has been started with the aim to learn the experience (both positive and negative) in organisation of entrance examinations in the institutions of higher education in Ukraine (in particular, interesting practice at the University of "Kiev-Mohyla Academy" and the Ukrainian Academy of Internal Affairs), the experience of universities in Ukraine before 1917, the contemporary experience of British universities (UCAS system; the practice of University of London Examination and Assessment Council) and the organisation of "A"-level examinations in Great Britain, an outstanding experience of Taiwan's College Entrance Examination Center not only in organisation of an island-wide entrance examinations to the institutions of higher education, but also in generalising global experience in this sphere.

The present paper was prepared on the basis of generalising experience of a pilot project "Access to Education in Ukrainian Law Schools" conducted by the Committee of the Supreme Rada (Parliament) of Ukraine on Legal Policy, Judicial and Legal Reform, the Centre for Social and Political Research (CSPR) at the University of "Kiev-Mohyla Academy", the Foundation for Promotion of Legal and Political Reforms (Kiev), the World Congress of Ukrainian Lawyers, and the University of East London with the assistance of the British Government Know-How Fund and the British Council, as well as on the basis of the relevant research conducted by the CSPR with the assistance of the Chiang Ching-kuo Foundation for International Scholarly Exchange (Taiwan). There are already several publications related to this project,⁴ some politicians incorporate the main ideas worked out during this project into their political programmes. There is a hope that quite soon Ukraine would be ready to effectively follow the road of civilised nations in the sphere of education management (as to universities admission and examinations procedures), and the relevant Ukraine's policies may become a good example to a number of other post-Soviet countries.

⁴ V.Yakushik, Social Sciences and the Challenge of Transition. Ukraine. National Report. - In: Workshop on "Social Sciences and the Challenge of Transition". Bled, 11-13 June 1998. Compendium of National Reports. DESC/EDU/HE 98/1 Prov. Org. Eng. Strasbourg, 25 May 1998. (Council of Europe - Slovenian Ministry of Education and Sport: Strasbourg, 1998.) - P. 11, 28-29 (in English); V.Yakushik, Implementing Principles of Rule of Law and Social Justice in the Process of Entrance Examinations to Higher Education Institutions. - In: Ukraine: People, Society, Nature. The Fourth Annual Academic Conference. 22-23 January 1998. (University of "Kiev-Mohyla Academy": Kiev, 1998.) - P. 145-145 (in English); V.Sushchenko, V.Yakushik, Pressing Issues of Legal Education within the Context of Ukraine's National Security. - In: Economic Journal (Ekonomichnyi Chasopys.) (Kiev.) 1997. No 10. - P. 37-39 (in Ukrainian).